

**To:** Swenson, Peter[swenson.peter@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Burdick, Melanie[Burdick.Melanie@epa.gov]; Pallesen, Reginald[pallesen.reginald@epa.gov]  
**From:** Wester, Barbara  
**Sent:** Thur 10/20/2016 1:56:53 PM  
**Subject:** Re: deadline question about MI CWA authority

## Ex. 5 - Attorney Client

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**From:** Swenson, Peter  
**Sent:** Thursday, October 20, 2016 8:43 AM  
**To:** Melgin, Wendy; Burdick, Melanie; Pallesen, Reginald; Wester, Barbara  
**Subject:** FW: deadline question about MI CWA authority

Wendy, Melanie, Reg and Barbara

## Ex. 5 - Deliberative Process

**From:** Cassell, Peter  
**Sent:** Wednesday, October 19, 2016 5:16 PM  
**To:** Pierard, Kevin <pierard.kevin@epa.gov>; Swenson, Peter <swenson.peter@epa.gov>  
**Cc:** Henry, Timothy <henry.timothy@epa.gov>  
**Subject:** Fwd: deadline question about MI CWA authority

## Ex. 5 - Deliberative Process

Pete Cassell

Press Officer

U.S. EPA Region 5

312-886-6234 (office)

312-859-9614 (cell)

[cassell.peter@epa.gov](mailto:cassell.peter@epa.gov)

Sent from my mobile device - please pardon typos.

Begin forwarded message:

**From:** Steve Verburg <[SVerburg@madison.com](mailto:SVerburg@madison.com)>  
**Date:** October 19, 2016 at 4:50:55 PM CDT  
**To:** " ([cassell.peter@epa.gov](mailto:cassell.peter@epa.gov)) " <[cassell.peter@epa.gov](mailto:cassell.peter@epa.gov)>  
**Subject:** deadline question about MI CWA authority

Pete,

Following up on our phone conversation, I'm interested in knowing if there are differences between Michigan's authority under CWA and Wisconsin's.

I'm writing about Aquila's Back Forty mining project in the U.P. I was told that the authority delegated to Michigan means EPA and ACOE are less involved in permitting the mine (compared to the way it has been done in Wisconsin)

•□□□□□□□ Michigan has assumed authority to operate the federal Clean Water Act (CWA) Section 404 program regulating the discharge of dredge and fill material. That means that for most waters in Michigan, the Michigan Department of Environmental Quality (MDEQ), rather than the U.S. Army Corps of Engineers, is the CWA Section 404 permitting authority except for areas within Indian country, where the COE retains permit issuing authority. Wisconsin has not assumed this authority and the U.S. Army Corps of Engineers is the CWA 404 permitting authority within Wisconsin, including in Indian country.

•□□□□□□□ Because EPA oversees the operation of state CWA 404 programs, and has ability to object to state 404 permits, and to take enforcement actions for violation of state-issued CWA 404 permits, EPA is very involved in Michigan's CWA 404 program.

While the U.S. Army Corps of Engineers does not issue permits for most waters in Michigan, it does review and provide comments on State-proposed CWA 404 permits. Also, under the CWA 404 program, where EPA objects to a State-proposed CWA 404 permit, and the objections are not resolved, jurisdiction for issuing that permit then reverts to the U.S. Army Corps of Engineers.

and Michigan isn't obligated to consult with the Menomonie Indian Tribe of Wisconsin about sites that have cultural significance off-reservation on the mine site.

• [REDACTED] The federal tribal consultation requirements apply to situations involving federal actions, and the issuance of a state permit does not trigger consultation. Nevertheless, has EPA noted the tribes concerns regarding cultural resources and requested MDEQ coordinate with Michigan's State Historical Preservation Officer and Tribal archeologists to address these concerns.

The way it was told to me was that only Michigan and N.J. have this particular authority under the act.

• [REDACTED] That is correct. While other states have considered, or are considering assuming the CWA 404, currently only Michigan and New Jersey have assumed the program.

Any light you can shine will be much appreciated. I'm writing for the weekend and being asked to file by the end of the day tomorrow.

Thanks,

Steve Verburg

Reporter, Wisconsin State Journal

608.252.6118

@St\_Verburg